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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/954,443	09/17/2001	James Robert Adair JR.	17244-0129	6585
29052	7590	06/13/2003		
SUTHERLAND ASBILL & BRENNAN LLP 999 PEACHTREE STREET, N.E. ATLANTA, GA 30309			EXAMINER	
			TRUONG, THANH K	
		ART UNIT	PAPER NUMBER	
		3721	8	
DATE MAILED: 06/13/2003				

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	09/954,443	ADAIR ET AL.
	Examiner Thanh K Truong	Art Unit 3721

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 02 May 2003.
- 2a) This action is FINAL.      2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 9-26 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 9-26 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) The oath or declaration is objected to by the Examiner.

#### Priority under 35 U.S.C. §§ 119 and 120

- 13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some \* c) None of:
1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_ .
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) The translation of the foreign language provisional application has been received.
- 15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

#### Attachment(s)

- |  |  |
|--|--|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                               | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ . |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)           | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ . | 6) <input type="checkbox"/> Other: _____ .                                   |

### DETAILED ACTION

1. This action is in response to applicant's amendment, Paper No. 7, received on May 2, 2003.
2. Applicant's cancellation of claims 1-8 in Paper No. 7 is acknowledged.

#### ***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 9-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nakamura et al. (6,301,859) in view of Boeckmann (4,896,048).

Nakamura et al. discloses (figures 10, 11A & 11B) a heat seal die comprising: a first and second die members 15 having longitudinal axis and die face; a first and second heating elements 24; a first and second longitudinal heat tubes 26 (a & b) disposed in the first and second die member between the heating element and the die face for maintaining a uniform heat seal temperature along the die face.

Nakamura et al. further discloses the longitudinal heat tube extends from the one end to the other end of the die member; and the heating element 24 is a heating cartridge disposed in a longitudinal bore 23 (a & b) in the die member; the die face of the first die member 15 has plurality of alternating longitudinal lands and grooves 19 and the second die member 15 has plurality of alternating longitudinal lands and grooves 19, the lands and grooves of the first and second die members are arranged for

selective mating arrangement; the die member each has longitudinal sides and a raised portion and sloping walls; and the die member each has a temperature sensor 28 disposed in the downwardly facing longitudinal side.

Nakamura et al. discloses the claimed invention, except for a system and method comprising: heat sealable material feeder; flowable material feeder and a form/fill/seal apparatus.

Boeckmann discloses a system and method comprising: a heat sealable material 10 feeder; a flowable material feeder 11; and a form/fill/seal apparatus (figure 1) that forming a package with heat sealable film, filling the package with flowable material and sealing the package. The system provides an improved method and apparatus to manufacture packages which is capable of forming cross seals that are air and liquid-tight (column 1, lines 41-44).

Therefore, it would have been obvious to one having ordinary skill in the art, at the time applicant's invention was made, to combine and modify Nakamura et al. and Boeckmann teachings to provide a method and a system that include a heat sealable material feeder; flowable material feeder and a form/fill/seal apparatus that is effective in producing airtight and leak-proof packages.

Regarding claims 11 and 20, although neither Nakamura et al. nor Boeckmann mentioned the size of the package being made. It would have been obvious to one having ordinary skill in the art at the time the invention was made to produce packages of portion size in the range of one desire, since it has been held that where the general

conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233.

***Response to Arguments***

5. Applicant's arguments filed May 2, 2003 have been fully considered but they are not persuasive.

i. In response to the Applicant's argument that Nakamura discloses heat sealing jaws comprising heat conducting members 33a and 33b such as solid rods of copper having a high conductivity, instead of heat tubes or heat pipes as cited in claims 9 and 18; the heat conducting members 33a and 33b were not relied up on for the 103 rejection of claims 9-26 (see paragraph 4 above of this office action), instead heat tubes 26 (a & b) of figure 11A was used in the 103 rejection of claims 9-28.

ii. In response to the Applicant's argument that Nakamura teaches away from using heat tubes, again, the admitted prior art (figure 11A) from Nakamura's patent discloses the use of heat pipe in the sealing jaw, and it was relied upon to form the 103 rejection as mentioned above. Nakamura's heat conducting members 33a and 33b was not relied upon as a reference for the 103 rejection.

iii. In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988)and *In re*

Jones, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, figure 10 of Nakamura discloses a form/fill/seal apparatus, but does not expressly disclose the heat sealable material feeder. Boeckmann, on the other hand, expressly discloses a form/fill/seal apparatus that has heat sealable material feeder, therefore the references clearly provide the motivation to combine and made modification to produce the claimed invention.

iv. In response to the Applicant's argument that Nakamura does not address portion control sized packaging system; figure 10 of Nakamura reference expressly shows the weighing and packaging system; products are weight in a predetermined weight before being discharged to the packaging machine (column 1, lines 13-55). Nakamura clearly teaches portion control sized packaging system.

### ***Conclusion***

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thanh K Truong whose telephone number is (703) 605-0423. The examiner can normally be reached on Mon-Thurs from 8:00 AM to 6:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi I Rada can be reached on (703) 308-2187. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9302 for regular communications and (703) 872-9303 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 872-9301.

tkt  
June 5, 2003



Rinaldi I. Rada  
Supervisory Patent Examiner  
Group 3700